tained substantially the same language. The consolidated corporation, with its own funds, purchased a new car to take the place of a worn out car formerly belonging to the mortgagor. Whether the use of this car was confined to the road formerly owned by the mortgagor does not appear. In this proceeding to foreclose the mortgage, the principal question is whether the lower court erred in decreeing a sale of the new car. *Held,* "Although the car in dispute was purchased by the receivers of the consolidated company, it was nevertheless, after its acquisition, subject to the lien of the mortgage of the Wilmington and New Castle Electric Railway Co., and passed to the purchaser at the sale made under the foreclosure decree." *National Bank of Wilmington & Brandywine* v. *Wilmington, N. C. & S. Ry. Co.* (Del., 1911), 81 Atl. 70. -- also 25 Harv L Rev 294.

"It is common learning in the law that a man cannot grant or charge that which he hath not." PERKINS, GRANTS, § 65. In the doctrine of fixtures this rule finds an exception. A mortgage on real property is a lien upon all subsequently attached fixtures; and rolling stock becomes subject to the mortgage upon the railroad, even though not necessarily held to be fixtures. 1 JONES, RAILROAD SECURITIES, § 121. However, the after acquired property must be included in the terms of the mortgage. Id. § 133. The right of the mortgagor to give a mortgage upon its after acquired rolling stock is, therefore, very plain, but whether such mortgage can become a lien upon the property of a consolidated company of which the mortgagor subsequently becomes a part, is a question presenting some difficulty. Authorities in point are very few. It is well settled that in case of consolidation there can be no loss of identity to prejudice the rights of prior creditors. *Central Ry. & Banking Co.* v. *Georgia,* 92 U. S. 665. The consolidated company cannot divert the dividends of the mortgagor into its own property and claim exemption. In *Hinchman* v. *Point Defiance Ry. Co.*, 14 Wash. 349, 44 Pac. 867, a mortgage given on a road, only part of which was constructed, was declared a lien upon improvements put upon an extension of said road by the vendees thereof. The principal case finds full support in *Hamlin* v. *Jerrard,* 72 Me. 62, upon which it largely relies. However, although the court in the principal case criticised as dictum the language of the court in *New York Sec. & Trust Co.* v. *Louisville, E. & St. L. Con. R. Co.*, 102 Fed. 382, that case seems to be an authority against it. There, in addition to seeking priority over the mortgagors of the consolidated company, the mortgagors of the constituent company sought to extend their lien, under a clause in the mortgage similar to the one at bar, to new equipment purchased by the consolidated company to replace the worn out cars of the constituent company. The court was thus called upon to, and did, decide that the after acquired property clause in the mortgage could rightly be construed "to extend only to property subsequently acquired by the mortgagor." Perhaps this case loses some of its force by reason of its reliance upon cases not in point.

MUNICIPAL CORPORATIONS—LIABILITY FOR INJURIES RESULTING FROM CIVIC BEAUTIFICATION.—Plaintiff city had provided for the "parking" of certain streets, by the planting of grass, flowers and shrubbery in the spaces between

the side-walks and the curb line. Breaks in these plots were made at intervals to allow of passage from the side-walk to the street. In order to protect these plots, a wire was strung from small stakes about two feet in height and thirty feet apart. There was considerable sag in the wire by reason of the distance between the successive stakes. Defendant, (plaintiff below), while attempting to cross one of these plots in the night time, tripped over one of these wires and was injured, for which injury he seeks to hold the city liable. *Held,* the city was liable. "The fact that a municipality may maintain, or permit to be maintained, a barrier around such strips to prevent pedestrians from going thereon does not authorize such a dangerous construction as would be a menace to the life or safety of a pedestrian exercising due care for his own safety in an attempt to cross over the same." *Village of Barnesville* v. *Ward,* (Ohio 1911), 96 N. E. 937.

This case is novel both because it is one of first instance in Ohio, and also because of the scarcity of adjudicated cases involving liability in connection with "civic beautification." Where a municipality has power to improve streets sufficient in width by parking them, it has the power to control such improvements and to protect them by suitable barriers. *Dotey* v. *District of Columbia,* 25 App. D. C. 232. *Cartwright* v. *Liberty Telephone Co.,* 205 Mo. 126, 103 S. W. 982; *Weller* v. *McCormick,* 47 N. J. L. 397, 1 Atl. 516, 54 Am. Rep. 175; *Adams* v. *Syracuse Lighting Co.,* 121 N. Y. Supp. 762, 137 App. Div. 449. It may protect them even as against an abutting property owner who made the improvement. *Baker* v. *Town of Normal,* 81 Ill. 108. But the municipality must exercise this power of control with prudence and within reason, and not wantonly and carelessly. *Cartwright* v. *Liberty Telephone Co., supra.* And such is the decision in the principal case. This barrier as erected was declared to be "not a barrier to prevent, but rather a device to trip and punish anyone who would attempt to cross this strip in the night season." The municipality cannot in this way undertake to punish a user of the street for his failure to appreciate the improvement made. "That a pedestrian has not sufficient civic pride to refrain from going upon or crossing this strip does not justify the placing of a nuisance there that might probably cause his death or do him great bodily harm, if he should attempt to do so."

MUNICIPAL CORPORATIONS—PARTIAL VACATION OF STREETS—TITLE TO LAND VACATED.—A city, in order to narrow one of its streets for a portion of its length, passed an ordinance in 1888 vacating a strip ten feet wide from each side of said street. In 1901, another ordinance was passed vacating a similar strip from another portion of the same street. The second ordinance expressly provided that the city quit-claimed the part so vacated to the abutting property owners, and that it should become a part of their several properties. This ordinance was declared void because of defects in its passage. The city later paved this street, and sought to assess plaintiffs, property owners along the street, for the cost of this improvement. The latter contend that since the ordinance of 1888 they are not abutting owners; that there is a strip ten feet wide separating their properties from the street; and that the fee in this strip is in the city. Therefore they contest the assessment. *Held,* by LADD, J., the